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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,197	02/06/2004	Norbert Abels	7678.599.1	6975

22913 7590 01/19/2005

WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER &  
SEELEY)  
60 EAST SOUTH TEMPLE  
1000 EAGLE GATE TOWER  
SALT LAKE CITY, UT 84111

EXAMINER

WILSON, JOHN J

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 01/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/774,197		ABELS ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	John J. Wilson		3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-18 and 20-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1,3-18,21-23 and 25-30 is/are rejected.
- 7) ☒ Claim(s) 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5, 7-9, 16, 18 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Pletcher (4077126). Christoff shows a bracket 20d, see Fig. 11, base 24d which can be made of metal, plastic or ceramic, and hinge cover made of metal or metal alloy, column 9, lines 8-14. While Christoff gives the options of making the base of plastic or ceramic while making the cover of metal, the reference does not specifically teach this. Pletcher teaches a specific embodiment comprising a ligation cover 37 that is made with metal and a base made from plastic, column 4, lines 35-38. It would be obvious to one of ordinary skill in the art to modify Christoff to include using the materials as shown by Pletcher in order to obtain a bracket with the desired properties. Christoff further shows a base at 24g, Fig. 17; and similar base in Figs. 18 and 19, and shows a cover 32, Fig. 19 that covers substantially all of an upper surface of the base. The shown wings 26h and 28h are not interpreted as being part of the base, and therefore, the shown structure meets the claim language. Further, the cover is shown as covering "an" upper surface of the base, and as such, also meets the claim language. As to claim 3, the type of hinge used is an obvious matter of choice in known hinges to one of ordinary skill in the art. As to claim 9, see latch at the end opposite the hinge in Fig. 11 of Christoff. As to claim 16, to use a rigid plastic would be obvious

to one of ordinary skill in the art in order to apply the desired forces to a tooth. As to claim 30 the number of latch positions used is an obvious matter of choice in the number of a known structure used and a non-critical feature to one of ordinary skill in the art.

Claims 4 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Pletcher (4077126) as applied to claim 1 above, and further in view of Kurz (5857849). The above combination does not show a film hinge. Kurz teaches using a film hinge 22. It would be obvious to one of ordinary skill in the art to modify the above combination to include a film hinge as shown by Kurz in order to make use of known hinge types in the art. As to claim 13, the above combination does not show a spring. Kurz teaches using a spring "C" to urge the cover closed. It would be obvious to one of ordinary skill in the art to modify the above combination to include a spring as shown by Kurz in order to bias the cover to apply the desired forces. As to claim 19, the above combination does not show a cover that substantially covers the upper surface of the bracket. Kurz shows a bracket base 10a as shown in Fig. 1 that has a substantial portion of the upper surface covered by the cover 10b. It would be obvious to one of ordinary skill in the art to modify the above combination to include a cover as shown by Kurz in order to make use of known shapes and sizes for covers in the art.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Pletcher (4077126) as applied to claim 1 above, and further in view of Voudouris (5474445). The above combination does not show a pin hinge. Voudouris shows a pin hinge 22; Figs. 12-17. It would be obvious to one of ordinary skill in the art to modify the

above combination to include a pin hinge as shown by Voudouris in order to make use of known types of hinges in the art to best litigate the arch wire.

Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Pletcher (4077126) as applied to claim 1 above, and further in view of Voudouris (5908293). The above combination does not show opening means that urges the cover to remain open. Voudouris teaches using opening means that urge the cover to remain open, column 7, lines 7-21. It would be obvious to one of ordinary skill in the art to modify the above combination to include opening means as shown by Voudouris in order to allow for easier access.

Claims 17 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Pletcher (4077126) as applied to claim 1 above, and further in view of Heiser et al (5562444). The above combination does not show a plurality of covered slots. Heiser shows a plurality of covered slots 5, 8. It would be obvious to one of ordinary skill in the art to modify the above combination to include a plurality of covered slots as shown by Heiser in order to ligate all of the wires that are desired to be used with one cover.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Kurz (5857849). Christoff shows a bracket 20d, see Fig. 11, base 24d which can be made of metal, plastic or ceramic, and hinge cover made of metal or metal alloy, column 9, lines 8-14. Christoff does not show a film hinge. Kurz teaches using a film hinge 22.

It would be obvious to one of ordinary skill in the art to modify Christoff to include a film hinge as shown by Kurz in order to make use of known hinge types in the art. Christoff shows allowing the cover to rotate about the hinge over a substantial angle of rotation. To use a film hinge to allow this movement is an obvious matter of choice in the degree of motion desired to the one of ordinary skill in the art. As to claim 21, Christoff does not significantly bias the cover. To use of film hinge that does not significantly bias the cover is an obvious matter of choice in the degree of bias used by the skilled artisan.

Claims 22, 23, 25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Kurz (5857849). Christoff shows a bracket 20d, see Fig. 11, base 24d which can be made of metal, plastic or ceramic, and hinge cover made of metal or metal alloy, column 9, lines 8-14. Christoff further shows a base at 24g, Fig. 17, and similar base in Figs. 18 and 19, and shows a cover 32, Fig. 19 that covers substantially all of an upper surface of the base. The shown wings 26h and 28h are not interpreted as being part of the base, and therefore, the shown structure meets the claim language. Further, the cover is shown as covering "an" upper surface of the base, and as such, also meets the claim language. Christoff may not show the degree of covering, depending on interpretation. Kurz shows a bracket base 10a as shown in Fig. 1 that has a large degree of the upper surface covered by the cover 10b. It would be obvious to one of ordinary skill in the art to modify Christoff to include a cover as shown by Kurz in order to make use of known shapes and sizes for covers in the art. The specific type of hinge used is an obvious matter of choice in known hinge types to the skilled artisan.

Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff et al (6071119) in view of Kurz (5857849) as applied to claim 25 above, and further in view of Voudouris (5474445). The above combination does not show a pin hinge. Voudouris shows a pin hinge 22, Figs. 12-17. It would be obvious to one of ordinary skill in the art to modify the above combination to include a pin hinge as shown by Voudouris in order to make use of known types of hinges in the art to best litigate the arch wire.

***Allowable Subject Matter***

Claim 20 is allowed.

Claim 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed December 8, 2004 have been fully considered but they are not persuasive. The degree of "an" upper surface that is covered, and in general, the degree of the upper surface covered are held to be obvious matters of choice in the degree of a known structure to one of ordinary skill in the art in view of the prior art which shows varying degrees of coverage.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

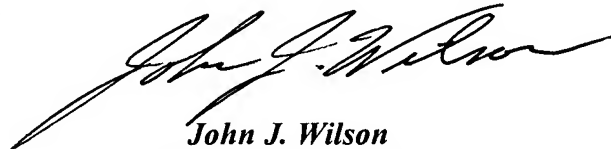
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is 571-272-4722). The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached at 571-272-4720). The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**John J. Wilson**  
**Primary Examiner**  
**Art Unit 3732**

jjw  
January 14, 2005